

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

R.P. SMALL CORP.,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	CIVIL ACTION H- 20-1490
	§	
THE LAND DEPARTMENT, INC., et al.,	§	
	§	
<i>Defendants.</i>	§	

ORDER

Pending before the court is a motion to strike filed by defendants The Land Department, Inc., Cypress Rock Land Services, LLC, and Michael H. Mann (collectively, “Defendants”). Dkt. 23. Also pending before the court are (1) two motions to disqualify counsel (Dkts. 15, 18); (2) two unopposed motions to withdraw as counsel (Dkts. 19, 20); (3) a motion to dismiss the first amended complaint (Dkt. 17); and (4) an unopposed motion for leave to file a response in excess of the court’s page limits (Dkt. 26).


The two motions to withdrawal (Dkts. 19, 20), which are both unopposed, are GRANTED. Consequently, the two motions to disqualify (Dkts. 15, 18), which relate to the attorneys who have withdrawn, are DENIED AS MOOT.

The motion to strike the second amended complaint is based on the failure of the plaintiff to move to amend. *See* Dkt. 23. The plaintiff, however, when filing its second amended complaint, noted that if leave was required, it would so move. *See* Dkt. 21 n.1. The plaintiff also moved to amend, in the alternative, in its response to the motion to strike. *See* Dkt. 27. Under Federal Rule of Civil Procedure 15(a)(2), the “court should freely give leave [to amend the complaint] when justice so requires.”

The court finds that leave to amend is required in this circumstance. *See* Fed. R. Civ. P. 15(a)(1)(B) & Comm. Notes on Rules—2009 Amendment (“If a responsive pleading is served after one of the designated motions is served, for example, there is no new 21-day period.”). However, the court also finds that justice requires granting leave to amend. *See* Fed. R. Civ. P. 15(a)(2). Accordingly, the plaintiff’s alternative motion for leave to amend is GRANTED. Since the second amended complaint is already on the record (*see* Dkt. 21), it shall be considered filed as of the date of this order. The defendants shall calculate the date to answer or otherwise respond accordingly.

The motion to dismiss the first amended complaint (Dkt. 17) is DENIED AS MOOT. The unopposed motion to file a response in excess of the court’s page limits (Dkt. 26) is likewise DENIED AS MOOT.

Signed at Houston, Texas on July 22, 2020.



Gray H. Miller
Senior United States District Judge